

Remarks

Applicants have amended independent claims 1, 12, and 22. Applicants respectfully submit that no new matter was added by the amendment, as all of the amended matter was either previously illustrated or described in the drawings, written specification and/or claims of the application.

Entry of the amendment and favorable consideration thereof is earnestly requested.

Interview of September 26, 2008

The Applicants appreciate the telephone interview with the Examiner on September 26, 2008, and thank the Examiner for his time and consideration regarding this application and cited prior art reference. During the interview the parties discussed minor claim amendments to independent claims 1, 12, and 22.

On September 29, 2008 the Applicants submitted a Response to the Final Office Action dated July 25, 2008 incorporating the claim amendments discussed during the interview. The Examiner responded to the Applicants' remarks in the October 10, 2008 Advisory Action. The Examiner did not enter the amendments because he stated that they raise new issues that would require further consideration and/or search. The Applicants have now filed this Response incorporating the claim amendments and remarks in support thereof incorporated in the Response to Final Office Action dated September 29, 2008.

Claim Rejections – 35 USC §102

Claims 1 – 21

The Examiner has rejected claims 1 – 21 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,954,747 to Clark ("Clark"). The examiner has indicated that Clark may be considered to have a shoulder in the juncture where the pointed top meets the rest of the annular face. (Final OA at 3.) The Applicants have amended in-

dependent claims 1 and 12 by adding the limitation that the shoulder extends in a cross section plane being substantially perpendicular to a longitudinal axis of said guide sleeve. The Applicants have further deleted the limitation that ~~said front annular face is substantially planar with the exception of said single point and said shoulder~~. In view of the above amendment these rejections are respectfully traversed.

The Applicants respectfully submit that Clark does not anticipate the claimed invention as claimed in claims 1 – 21 because Clark is missing a shoulder that extends in a cross section plane being substantially perpendicular to a longitudinal axis of said guide sleeve as required by claims 1 - 21. The shoulder disclosed in Clark is not in a cross section plane being substantially perpendicular to a longitudinal axis of the guide sleeve. (Final OA at 3.) Rather, the shoulder disclosed in Clark is in a cross section plane that intersects the longitudinal axis at an angle of forty-five degrees or less. The Applicants respectfully submit that a cross section plane being perpendicular to a longitudinal axis of said guide sleeve intersects the longitudinal axis at an angle of ninety degrees. During the September 26, 2008 interview the parties discussed this amendment, and the Examiner indicated that he may view such an amendment favorably.

During the interview, the Examiner further expressed a possible concern regarding the outer slideable tube (54) disclosed in Clark. Specifically, the Examiner stated that this tube may anticipate the claimed invention as claimed in claims 1 to 22 to the extent it can be slid to the distal end of the guide tube to form a front annular face. The Applicants respectfully note that the Examiner made a similar rejection in the Official Action dated May 18, 2007. In response the Applicants amended the relevant claims to include the limitation that said single point is fixed relative to said front annular face, and the Examiner determined that this amendment distinguished the claimed invention from the prior art. In this case, the outer slideable tube (54) cannot meet the annular face limitation because the outer slideable tube is not fixed relative to the single point.

Claims 22 – 31

The Examiner has also rejected claims 22 – 31 under 35 U.S.C. §102(b) as being anticipated by Clark. The Examiner has indicated that Clark has a front annular face that is approximately perpendicular to a longitudinal axis of the longitudinal body. The Applicant has amended independent claims 21 as follows: said front annular face is substantially planar and extends in a cross section plane being approximately substantially perpendicular to a longitudinal axis of said guide sleeve ~~with the exception of said single point and said shoulder~~. In view of the above amendment these rejections are respectfully traversed.

The Applicants respectfully submit that Clark does not anticipate the claimed invention as claimed in claims 22 – 31 because Clark is missing a front annular face that is substantially planar and extends in a cross section plane being substantially perpendicular to a longitudinal axis of said guide sleeve. The annular face disclosed in Clark is not in a cross section plane being substantially perpendicular to a longitudinal axis of said guide sleeve. (Final OA at 3.) Rather the front annular face in Clark is in a cross section plane that intersects the longitudinal axis of said guide sleeve at angle of forty-five degrees or less. The Applicants respectfully submit that a cross section plane being perpendicular to a longitudinal axis of said guide sleeve intersects the longitudinal axis at an angle of ninety degrees. Clark does not anticipate the present invention as claimed in claims 22 to 31, because Clark is missing a front annular face that is substantially planar and extends in a cross section being substantially parallel.

Nonobviousness

As discussed in Applicants Response to Official Action dated April 28, 2008 there is no teaching, suggestion, or motivation to modify Clark to arrive at the claimed invention. The Applicants previous remarks are substantially reproduced *infra* for reference.

There is no motivation to modify the distal end of the needle in Clark by adding a shoulder and/or front annular face that extends in a cross section plane being substan-

tially perpendicular to a longitudinal axis of said guide sleeve. Clark is designed to easily penetrate soft tissue. Clark teaches that that a straight or smooth transition between the distal point and front face decreases the resistance required to insert the needle when inserted into the soft tissue and minimizes unwanted tissue damage.

The straight or even transition between the distal point and the front face in Clark allows the surgeon to more easily insert the hollow needle into the meniscus tissue. As the hollow needle is inserted, the diameter of the needle penetrating the surface of the meniscus gradually increases due to the smooth transition between the point and annular face. If Clark included a shoulder or front annular face in a cross section plane being substantially perpendicular to the longitudinal axis, as disclosed in the present invention, the diameter of the hollow needle would abruptly increase. Such an abrupt increase would make the needle more difficult to insert into the tissue, and would cause unnecessary damage to the tissue. Furthermore, one of ordinary skill in the art would not be motivated to modify the needle of Clark to arrive at the present invention because Clark and the present invention are directed to solving different problems. Clark is directed to penetrating soft tissue. The present invention, on the other hand, is directed to securing or fixing to hard tissue.

Conclusion

For these reasons, it is respectfully submitted that claims 1 – 31 are in order for allowance and early notice to that effect is respectfully requested.

Respectfully submitted,

/ Wesley W. Whitmyer, Jr./

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